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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ADAM WYNN TINGLEY,

Plaintiff,

vs.

NEVADA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

Case No. 3:14-cv-00358-MMD-VPC

**DEFENDANTS' MOTION FOR LEAVE TO
FILE MEDICAL RECORDS UNDER SEAL IN
SUPPORT OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

Defendants, Bruce Bannister, Susan Hoffman, Karry McCullah (incorrectly named as "Cari McCullough"), and Jonathan Perry, by and through counsel, Adam Paul Laxalt, Attorney General of the State of Nevada, and Benjamin R. Johnson, Deputy Attorney General, hereby submits this Motion for Leave to File Medical Records Under Seal in Support of Defendants' Motion for Summary Judgment.

MEMORANDUM OF POINTS AND AUTHORITIES

I. NATURE OF MOTION

Defendants have concurrently filed a Motion for Summary Judgment. In support of the Motion for Summary Judgment, Defendants cite to Plaintiff's medical records. An individual's medical records are private and confidential and should be protected from public disclosure. Defendants seek to file Plaintiff's medical records under seal to protect the Plaintiff's privacy

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interests in not having them placed in the public record. Therefore, Defendants seek leave to file these documents confidentially, under seal.

II. ARGUMENT

A. Leave Should Be Granted to File Plaintiff's Medical Records Under Seal

Courts have recognized a general right of the public to inspect and copy public records and documents, including judicial records and documents. *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (internal citations omitted). Documents that have been traditionally kept secret, including grand jury transcripts and warrant materials in a pre-indictment investigation, come within an exception to the general right of public access. *Id.* Otherwise, "a strong presumption in favor of access is the starting point." *Id.* (internal citations omitted).

On a showing of specific facts supporting compelling reasons for sealing records, the court should conscientiously weigh the compelling reasons against the public's right of access. *Id.* If the court finds the balance tips in favor of sealing the record, the court must articulate the factual basis for sealing the record without reliance on hypothesis or conjecture. *Id.* at 1179. Proof of a risk that use of the records "might . . . become a vehicle" for causing harm is "compelling reasons sufficient to outweigh the public's interest in disclosure and justify sealing court records." *Id.* at 1179 (internal quotation marks omitted).

Courts have consistently recognized that the need to protect sensitive medical information is a compelling reason to seal records. See *San Ramon Regional Medical Center, Inc. v. Principal Life Ins. Co.*, 2011 WL89931 at n.1 (N.D. Cal. Jan. 10, 2011); *Abbey v. Hawaii Employers Mutual Ins. Co.*, 2010 WL4715793 at 1–2 (D.Hi. Nov. 15, 2010); *G. v. Hawaii*, 2010 WL267483 at 1–2 (D.Hi. June 25, 2010); *Wilkins v. Ahern*, 2010 WL3755654 (N.D.Cal. Sept. 24, 2010); *Lombardi v. TriWest healthcare Alliance Corp.*, 2009 WL 1212170 at 1 (D. Ariz. May 4, 2009).

Exhibits A, B, D, E, F, G, H, I, and J to Defendant's Motion for Summary Judgment consists of portions of Plaintiff's medical file. These documents give details regarding Plaintiff's medical history relevant to his complaint. There is little need for public disclosure of this

1 information as compared to the significant interest in preserving the confidentiality of this
2 private and sensitive information. To preserve privacy, Defendants request that the Court
3 allow them to file Plaintiff's medical records under seal.

4 Plaintiff will not be prejudiced by this under seal filing as a copy of these documents will
5 be sent to Plaintiff's counsel. The purpose of the motion is to keep them out of the public
6 record.


7 **III. CONCLUSION**

8 Based on the foregoing arguments, it is respectfully requested the Court grant the
9 instant Motion for Leave to File Medical Records Under Seal in Support of Defendants' Motion
10 for Summary Judgment.

11 DATED this 29th day of January, 2016.

12 ADAM PAUL LAXALT
13 Attorney General

14 By:


15 BENJAMIN R. JOHNSON
16 Deputy Attorney General
17 Bureau of Litigation
18 Public Safety Division


19 *Attorneys for Defendants*
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 29th day of January, 2016, I caused to be served a copy of the foregoing **DEFENDANTS' MOTION FOR LEAVE TO FILE MEDICAL RECORDS UNDER SEAL IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**, by U.S. District

Court CM/ECF Electronic Filing to:

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